

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**HENRY WOODS,**

**Movant,**

**vs.**

**5:96-CR-0022-008  
(NAM)**

**UNITED STATES OF AMERICA,**

**Respondent.**

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**APPEARANCES:**

**OF COUNSEL:**

Henry Woods  
06996-052  
McCreary U.S. Penitentiary  
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Pine Knot, KY 42635  
Movant, *Pro Se*

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Attorney for Respondent

Brenda K. Sannes, Esq.  
Assistant U.S. Attorney

**NORMAN A. MORDUE, Chief U.S. District Judge**

**DECISION AND ORDER**

**I. Background**

Following a jury trial that commenced on January 27, 1997, movant Henry Woods was convicted of distributing and possessing with intent to distribute cocaine, and distributing and possessing with intent to distribute in excess of fifty grams of cocaine base, in violation of 21 U.S.C. § 846. Dkt. No. 747. Woods was then principally sentenced by the District Court to a term of three hundred twenty four months imprisonment. Dkt. No. 968. Woods appealed the

jury's verdict and his sentence to the Second Circuit, however that court affirmed Woods' conviction and sentence in all respects. *See United States v. Giles et al.*, No. 97-1663, 2000 WL 424142 (2d Cir. 2000).

On February 23, 2005, Woods filed a motion seeking a reduction of his sentence pursuant to 18 U.S.C. § 3742(3)<sup>1</sup> based upon his claim that in *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court declared the United States Sentencing Guidelines unconstitutional. *See* Dkt. No. 1302.

The Government filed papers in opposition to that application on June 27, 2007. *See* Dkt. No. 1328.

## **II. Discussion**

In *Cortorreal v. United States*, 486 F.3d 742 (2d Cir. 2007), the Court addressed appellant's claim that because the Supreme Court's decision in *Booker* constituted an implicit modification of the United States Sentencing Guidelines as well as a new rule of law that was retroactive to cases on collateral review, the appellant was entitled to re-sentencing under 18 U.S.C. § 3582(c)(2). *Cortorreal*, 486 F.3d at 743. In rejecting that argument, that court held:

because *Booker* was not a guideline amendment promulgated by the Sentencing Commission, the terms of Section 3582(c)(2) do not apply, and therefore the *Booker* decision cannot be the basis for a Section 3582(c)(2) motion to modify a sentence.

*Cortorreal*, 486 F.3d at 744.

Based upon the court's holding in *Cortorreal*, this Court denies Woods' application for a modification in his sentence.

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<sup>1</sup> 18 U.S.C. § 3742 governs the appellate review of sentences. 18 U.S.C. § 3582(c), however, addresses the powers of a District Court to modify a previously imposed term of imprisonment. This Court therefore presumes that Woods has made his application pursuant to 18 U.S.C. § 3582(c).

**WHEREFORE**, it is hereby

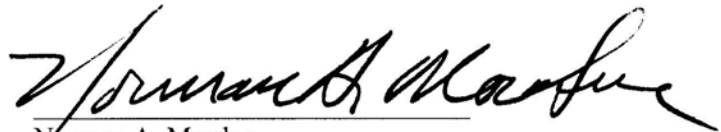
**ORDERED**, that Woods' motion for a reduction in his sentence (Dkt. No. 1302) is

**DENIED**, and it is further

**ORDERED**, that the Clerk of the Court serve a copy of this Order on the parties by regular or electronic mail.

**IT IS SO ORDERED.**

Dated: January 22, 2008  
Syracuse, New York

A handwritten signature in black ink, appearing to read "Norman A. Mordue". The signature is fluid and cursive, with a long horizontal stroke at the end.

Norman A. Mordue  
Chief United States District Court Judge